

REMARKS

Applicant respectfully requests non-entry of the previously filed unentered amendment dated March 29, 2004.

Claims 4-5, 9-11, 14-15, 17-18, 20-21, and 26 have been amended to more properly define preexisting claim limitations and are supported by the specification. Claim 27 has been cancelled without prejudice. No new matter has been added. Claims 2, 11, and 14-24 are indicated as allowable. Therefore, the following comments are directed to the objected to and rejected claims.

Objections to the Drawings and Specification

The drawings were objected to under 37 CFR 1.83(a). Applicant submits that claims 11 and 26 as amended have overcome the objections. Accordingly, applicant requests this objection be withdrawn.

Claims Objections

Claims 4 and 5 were objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant submits that claims 4 and 5 as amended have overcome the objections. Accordingly, applicant requests this objection be withdrawn.

Rejections Under 35 U.S.C. § 112

Claims 1-27 were rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for a diagnostic X-ray source, does not reasonably provide enablement for a diagnostic radiation source.

Applicant submits claims 1-13 and 22-27 do not recite a diagnostic radiation source as rejected under 35 U.S.C. §112, first paragraph. Furthermore, applicant submits that a diagnostic radiation source is enabled by the specification. Nonetheless, claims 14, 15, 18, 20, 21, and 26 have been amended to claim a diagnostic X-ray source, which the Examiner has agreed is enabled, in order to obtain allowance of these claims. Therefore, applicant respectfully requests the rejection to claims 1-26 be withdrawn under 35 U.S.C. §112. Applicant notes that Applicant does not concede that claims 14, 15, 18, 20, 21 and 26 prior to amendment were not enabled and reserves its rights to file a continuation application containing such claims should Applicant so desire.

Rejections Under 35 U.S.C. § 103(a)

Claims 1, 3-10, 12 and 13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,104,780 of Hanover ("Hanover") in view of U.S. Patent No. 6,325,537 of Watanabe ("Watanabe").

Neither Hanover nor Watanabe, either alone or in combination, teach or suggest an apparatus having a therapeutic energy source, as claimed. Rather, both Hanover and Watanabe disclose use of a diagnostic apparatus. Specifically, Hanover discloses “imaging systems 12 and 14 include first and second X-ray sources 40 and 42 and first and second image receptors 44 and 46 as known generally *in the X-ray diagnostic art*,

mounted upon opposing locations, respectively, on the C-arms 12 and 14.” Emphasis added (Hanover, column 5, lines 19-23). Also, Watanabe discloses “*an X-ray diagnosis apparatus* capable of exactly and easily achieving various positioning and *applicable to a wide range of diagnostic uses.*” Emphasis added (Watanabe, column 2, lines 31-33).

A diagnostic X-ray typically has low energy X-rays, which are less harmful to healthy tissue and more useful to provide accurate diagnostic information because tissue in the human body is typically of low density. In contrast, therapeutic X-rays consist of high energy X-rays to treat unhealthy tissue, such as a cancerous tumor. Also, the images produced from therapeutic X-rays are of low contrast and insufficient quality. Both Hanover and Watanabe explicitly disclose the use of diagnostic X-rays, and *not a first therapeutic radiation source* attached to a first gantry, as recited in claim 1.

Accordingly, applicant respectfully submits that claim 1 is not obvious under 35 USC 103(a) over Hanover in view of Watanabe. Therefore, applicant respectfully requests the rejection to claims 1 and 26 be withdrawn. Claims 3-10, 12, and 13 are dependent (directly or indirectly) on claim 1. Therefore, applicant respectfully requests the rejection to claims 3-10, 12, and 13 be withdrawn, at least for the reasons stated above for claim 1.

In conclusion, applicant respectfully submits that in view of the arguments and amendments set forth herein, the applicable objections and rejections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact André Gibbs at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

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